

Order Dismissing Petition; Denying COA  
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1 A district court shall “award the writ or issue an order directing the respondent to  
2 show cause why the writ should not be granted, unless it appears from the application that  
3 the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

4 **B. Petitioner’s Claims**

5 Petitioner seeks federal habeas relief based on the following claims: 1) petitioner  
6 has a protected liberty interest in parole under the due process clauses of the federal and  
7 state constitutions; 2) the decision violated due process because there was insufficient  
8 evidence to support the Board’s finding that petitioner presents a current risk to public  
9 safety; 3) the Board misapplied state regulations in their decision making; 4) the Board  
10 and the District Attorney used false information and incorrect criteria in determining  
11 petitioner’s sentence; and 5) the Board’s decision deprived petitioner of his right to “life,  
12 liberty and property” under the Fifth and Fourteenth Amendments.

13 For the purposes of habeas federal habeas review, a California prisoner is entitled  
14 to only “minimal” procedural protections in connection with a parole suitability  
15 determination. Swarthout v. Cooke, No. 10-333, slip op. 4-5 (U.S. Jan. 24, 2011). The  
16 procedural protections to which the prisoner is entitled under the Due Process Clause of  
17 the Fourteenth Amendment are limited to an opportunity to be heard and a statement of  
18 the reasons why parole was denied. Id. The attachments to the petition show that  
19 petitioner received at least this amount of process. The Constitution does not require  
20 more. Id. at 5. And although petitioner claims that his Fourteenth Amendment right to  
21 due process was violated under claim 5, the petition contains no factual allegations  
22 indicating that petitioner was actually deprived of the minimum procedural protections  
23 discussed above.

24 Whether the Board’s decision was supported by some reliable evidence of current  
25 dangerousness is irrelevant in federal habeas. The Supreme Court has made clear that “it  
26 is no federal concern... whether California’s ‘some evidence’ rule of judicial review (a  
27 procedure beyond what the Constitution demands) was correctly applied.” Id. at 6. In  
28 light of the Supreme Court’s determination that due process does not require that there be

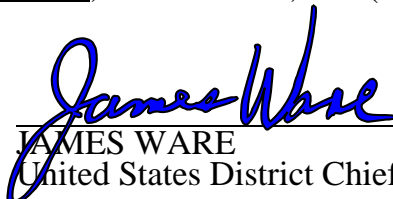
1 any amount of evidence to support the parole denial, the petitions fails to state a  
2 cognizable claim for relief. Plaintiff's claims alleging the misapplication of state laws  
3 and non-compliance with state regulations are also not cognizable in federal habeas.  
4

### 5 CONCLUSION

6 For the foregoing reasons, the petition for a writ of habeas corpus is DISMISSED  
7 for failure to state a cognizable claim for relief.

8 Pursuant to Rule 11 of the Rules Governing Section 2254 Cases, a certificate of  
9 appealability ("COA") under 28 U.S.C. § 2253(c) is DENIED because it cannot be said  
10 that "reasonable jurists" would find the district court's assessment of the constitution  
11 claims debatable or wrong. Slack v. McDaniel, 529 U.S. 473, 484 (2000).  
12

13 DATED: April 5, 2011 \_\_\_\_\_

  
\_\_\_\_\_  
JAMES WARE  
United States District Chief Judge

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

SERGIO GONZALEZ,  
Petitioner,

Case Number: CV10-04905 JW

**CERTIFICATE OF SERVICE**

v.

RANDY GROUNDS, Warden,  
Respondent.

\_\_\_\_\_/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 4/15/2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Sergio Gonzalez E-52514  
Soledad State Prison  
P. O. Box 689  
Soledad, CA 93960-0689

Dated: 4/15/2011

Richard W. Wieking, Clerk  
/s/ By: Elizabeth Garcia, Deputy Clerk